

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

JOHN C. MACDONALD,

Plaintiff,

vs.

UNITED STATES OF AMERICA, et al.,

Defendants.

ORDER

AND

MEMORANDUM DECISION

Case No. 2:06-CV-88 TC

Plaintiff John C. MacDonald seeks damages under the Federal Tort Claims Act (FTCA), 28 U.S.C. §§ 1346(b)(1) and 2761, et seq., for alleged injuries related to his employment with the Federal Bureau of Investigation (FBI). Following a review of Mr. MacDonald's complaint, the Deputy Director for the Federal Employees' Compensation at the United States Department of Labor's Office of Workers' Compensation Programs opined that there is a significant possibility of coverage under the Federal Employees' Compensation Act (FECA) for Mr. MacDonald's claim. If Mr. MacDonald's claims are covered under FECA, the court does not have jurisdiction. Tippetts v. United States, 308 F.3d 1091, 1094 (10th Cir. 2002) (holding that if federal employee's tort claim is covered by FECA, district court does not have jurisdiction to determine merits of plaintiff's claims). Accordingly, the United States now moves for a stay of this action pending the resolution of the issue of coverage under FECA.

For the reasons set forth in the United States' briefs, and based on the cases of Farley v. United States, 162 F.3d 613 (10th Cir. 1998), and Tippetts v. United States, 308 F.3d 1091 (10th

Cir. 2002), the court finds that there is a substantial question regarding whether Mr. MacDonald's tort claims are covered by FECA. Accordingly, the United States' Motion to Stay (Docket # 16) is GRANTED. The proceedings in this case are abated pending a determination by the Secretary of Labor about whether Mr. MacDonald's tort claims are covered by FECA.

The hearing scheduled for Monday, December 4, 2006, is stricken.

SO ORDERED this 28th day of November, 2006.

BY THE COURT:

A handwritten signature in black ink that reads "Tena Campbell". The signature is written in a cursive, flowing style.

TENA CAMPBELL
United States District Judge